

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B**

FILED

IN RE: ANN CECELIA DONOVAN, Respondent
 Arkansas Bar ID#78043
 CPC Docket No. 2008-083

JUN 23 2010

**LESLIE W. STEEN
CLERK**

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Marilyn Pearson in an Affidavit dated September 12, 2008. The information related to the representation of Ms. Pearson by Respondent beginning in 2007.

During 2008, Respondent was served with a formal complaint, supported by affidavit from Ms. Pearson. A response was filed by Ms. Donovan. Subsequently, an Amended Complaint and Response were filed.

The matter thereafter proceeded to ballot vote with the ballot vote Panel voting for a suspension of Ms. Donovan's law license for a period of six (6) months along with other sanctions. With there being no provision for reconsideration of the other sanctions imposed, Ms. Donovan requested a public hearing. During the time between the request for hearing and the date set for hearing, the Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel for review. Pursuant to the Procedures of the Arkansas Supreme Court and at the direction given by the Court and the Executive Committee, this matter was also sent to the Supreme Court for review and approval as it involved a period of suspension of Ms. Donovan's license to practice law in Arkansas.

The information before the Panel reflected that during February 2007, Marilyn Pearson

hired Ann Donovan, an attorney practicing primarily in Fayetteville, Arkansas, to represent her in a matter involving her mortgage company. Ms. Pearson, initially went to the office of another attorney but he was unable to handle the matter and suggested Ms. Donovan do so if she believed she could assist Ms. Pearson. Ms. Donovan believed that she could do so because she had experience dealing with statutory non-judicial foreclosures.

Ms. Donovan was able to stop the foreclosure sale which was scheduled and for that Ms. Pearson was grateful. However, Ms. Donovan's conduct after initially stopping the sale was of concern to Ms. Pearson.

A Consent Order in the action brought by Ms. Donovan for Ms. Pearson was entered on April 24, 2008, but Ms. Pearson was not provided a copy by Ms. Donovan when filed. Ms. Pearson was required to obtain a copy from the Court Clerk. Ms. Donovan faxed a copy to Ms. Pearson on June 10, 2008, which was a week after Ms. Pearson was able to obtain one from the Court Clerk.

On or about June 3, 2008, Ms. Pearson contacted her mortgage company because they had returned a payment she made to her. It was at that time that Ms. Pearson learned that the Consent Order had not been complied with and that they had received only \$419 of one \$600 payment and Ms. Pearson was still in foreclosure. The consent order required Ms. Donovan to submit to HomEq Servicing's counsel the funds held at her office (which Ms. Pearson had delivered to her) within ten days of entry of the Order. If not complied with within thirty (30) days of entry of the Order, they could proceed with collection activities against Ms. Pearson's property without any further Order of the Court. Ms. Donovan received the check from the Clerk of the Court for the amounts paid to that registry on April 24, 2008. Ms. Pearson received a

letter from the mortgage company, dated June 26, 2008, which set out that she was in foreclosure.

Ms. Pearson called Ms. Donovan to find out the reason behind the delay for complying with the consent order. Ms. Pearson left a voice-mail message and requested that Ms. Donovan provide her with a copy of all payments made and where they were sent. Ms. Donovan returned that call and advised that she had received an extension of time to comply with the court order. Ms. Pearson asked for a copy of all payments made, the extension documents, and the court order. Ms. Donovan advised that she needed one more day and then she would provide the information. She never did. There is nothing in the Clerk's file to indicate that Ms. Donovan ever received an extension to comply with the court order. There was an agreement by counsel but no extension order.

Ms. Pearson contacted Ms. Donovan again on June 18, 2008, to inquire why she had not sent the money orders for payment as instructed by the court. It was at this time that Ms. Donovan advised that two of the money orders that Ms. Pearson had delivered to her were missing. From the time of entry of the Consent Order until this date in June, Ms. Donovan did not advise Ms. Pearson that she had misplaced or lost the money orders. Ms. Pearson went to the bank and had the Money Orders reissued. Even after doing so and providing the money orders, Ms. Donovan did not send the payments immediately nor when she advised she would do so. The information provided indicated that Ms. Donovan finally sent the remaining funds to Mr. Goldshel, opposing counsel, on July 2, 2008, by Federal Express delivery.

The information about the money orders for payment of Ms. Pearson's mortgage demonstrate a failure on the part of Ms. Donovan to appropriately safeguard property of a client

or third person. The failure to appropriately safeguard those money orders and to promptly deliver them in accordance with the Consent Order demonstrate a clear violation of the Rules of Professional Conduct as they address trust accounts and property of others.

The records and e-mails Ms. Donovan submitted to the Committee demonstrated that she did not send the money orders promptly nor in compliance with the Court Order she negotiated on behalf of Ms. Pearson. Further, the e-mails demonstrate that she did not respond in a timely manner to opposing counsel nor did she provide documents to opposing counsel in a timely manner.

Upon consideration of the formal complaint and attached exhibit materials, the consent proposal, and other matters before it, and the Arkansas Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

A. That Ms. Donovan's conduct violated Rule 1.3, when she did not diligently represent Ms. Pearson in the conclusion of the matter involving her home; when she did not comply with the Order of April 24, 2008, in a timely manner; when she did not advise Ms. Pearson in a timely manner that she had lost the money orders which Ms. Pearson had entrusted to Ms. Donovan so that Ms. Pearson could take steps to secure replacement checks in time for compliance with the Order of April 24, 2008; when she did not provide Ms. Pearson with a copy of the Order of April 24, 2008, until during June 2008; and when she failed to timely deliver to HomEq Service's counsel the funds delivered to her by the Clerk of the Court on April 24, 2008. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

B. That Ms. Donovan's conduct violated Rule 1.4(a)(3), when she failed to provide

Ms. Pearson with a copy of the filed Consent Order immediately upon entry of the same and when she failed to inform Ms. Pearson that she had lost money orders entrusted to her by Ms. Pearson, until Ms. Pearson learned that the Order of April 24, 2008, had not been timely complied with by Ms. Donovan. Rule 1.4(a)(3) requires that a lawyer keep the client reasonably informed about the status of a matter.

C. That Ms. Donovan's conduct violated Rule 1.15(a)(2), because after being delivered money orders from Ms. Pearson, Ms. Donovan failed to appropriately safeguard, in that she lost them and Ms. Pearson had to have them replaced. Rule 1.15(a)(2) requires that property, other than funds of clients or third persons, shall be identified as such and appropriately safeguarded.

D. That Ms. Donovan's conduct violated Rule 1.15(a)(3), because upon entry of the Consent Order in the Pearson matter, Ms. Donovan had funds in her possession which HomeEq was entitled to receive and she failed to promptly deliver those funds to HomeEq or their counsel on behalf of her client, Marilyn Pearson. The Order was entered in April 2008 and Ms. Donovan did not deliver the funds until July 2008. Rule 1.15(a)(3) requires, in pertinent part, that upon receiving funds or other property in which a third person has an interest, a lawyer shall promptly deliver to the third person any funds or other property that the third person is entitled to receive.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, with approval of the Arkansas Supreme Court, that the Arkansas law license of ANN C. DONOVAN, Arkansas Bar ID#78043, be, and hereby is, SUSPENDED FOR A PERIOD OF SIX (6) MONTHS for her conduct in this matter. The suspension shall become effective on the date this Findings and Order is filed of

record with the Clerk of the Arkansas Supreme Court. In addition, Ms. Donovan agrees to continue participation in the Arkansas Lawyers Assistance Program.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL B

By: 
Steve Crane, Chair, Panel B

Date: 6-23-10

(13.M, Rev.1-1-02)